

Exhibit F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

-----:
BMG RIGHTS MANAGEMENT (US) LLC, :
et al., :
 Plaintiffs, :
 : Case No. 1:14-cv-1611
vs. :
 :
COX ENTERPRISES, INC., et al., :
 Defendants. :
-----:

MOTIONS HEARING

December 1, 2015

Before: Liam O'Grady, USDC Judge

APPEARANCES:

COUNSEL FOR THE PLAINTIFFS:

Michael J. Allan
John M. Caracappa
Margaret P. Kammerud
William G. Pecau
Jeffrey M. Theodore
Roger E. Warin
STEPTOE & JOHNSON LLP
1330 Connecticut Avenue, N.W.
Washington, D.C. 20036

Walter D. Kelley, Jr.,
HAUSFELD LLP
Suite 650
1700 K Street N.W.
Washington, D.C. 20006

COUNSEL FOR THE DEFENDANTS:

Andrew P. Bridges
Guinevere L. Jobson
Jedediah Wakefield
FENWICK & WEST LLP
555 California Street, 12th Floor
San Francisco, CA 94194

Brian D. Buckley
FENWICK & WEST LLP
1191 2nd Avenue, 10th Floor
Seattle, WA 98101

Craig C. Reilly
CRAIG C. REILLY, ESQ.
111 Oronoco Street
Alexandria, VA 22314

Page 30

1 the result of going into their program is that you're not being
2 treated responsibly, Your Honor.

3 It all goes to this entire scheme that they've put
4 together and to their willfulness.

5 THE COURT: Okay. All right. Well, I'm going to
6 allow BMG to put on its theory of the case. And as promised,
7 we're not going to harp on the 14 steps to termination. But I
8 think that for purposes of contributory infringement, actual
9 knowledge is BMG's burden. All of the e-mails, even though
10 they are not of BMG clients, go to the actual knowledge of the
11 program and the fact that Cox was not going to follow it. And
12 they weren't going to follow it because they didn't want to
13 lose customers. And it also clearly goes to the financial
14 incentive to keep the customers and, therefore, is highly
15 relevant to vicarious liability.

16 Whether the safe harbor defense exists or doesn't
17 exist doesn't change plaintiffs' burden to prove direct
18 infringement and then contributory or vicarious liability or
19 both. And that's why there is 40 cases to read on every one of
20 these issues. It's because the courts have allowed plaintiffs
21 to put in the evidence of what the defendant did with regard to
22 the DMCA and its obligation under the DMCA to or not to avoid
23 the liability issue. And so, I think it is relevant.

24 As to what other ISPs did, I will continue to think
25 about that now that you've brought it up and we've talked here